TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 713

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL., APPELLANTS

vs.

THE AMERICAN TRUCKING ASSOCIATIONS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

FILED FEBRUARY 9, 1940

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INDEX

A [Caption omitted.]

1 In District Court of the United States for the District of Columbia

Civil Action, File No. 3200

THE AMERICAN TRUCKING ASSOCIATIONS, INC., 1013 SIXTEENTH STREET NW., WASHINGTON, D. C.; BARNWELL BROTHERS, INCORPORATED, HAWKINS STREET, BURLINGTON, NORTH CAROLINA; BROOKS TRANSFER AND STORAGE COMPANY, 1301 NORTH BOULEVARD STREET, RICHMOND, VIRGINIA; BROOKS TRANSPORTATION COMPANY, 1301 NORTH BOULEVARD STREET, RICHMOND, VIRGINIA; THE BALTIMORE TRANSFER COMPANY OF BALTIMORE CITY, MONUMENT STREET AND GUILFORD AVENUE, BALTIMORE, MARYLAND, PLAINTIFFS

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, DEFENDANTS

Complaint

Filed June 22, 1939

(Action to compel the Interstate Commerce Commission to take jurisdiction respecting qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle.)

The plaintiffs respectfully represent unto the Court, that:

1. This action arises under the Act of Congress, approved August 8, 1935, known and cited as the Motor Carrier Act, 1935 (49 U. S. C. 301, et seq.), which will hereinafter be referred to as the "Motor Carrier Act." The jurisdiction of the Court is invoked under the provisions of the Urgent Deficiency Appropriations Act (38 Stat. L. 219, 220; 28 U. S. C. 43, 47) as applied and extended by section 205 (h) of the Motor Carrier Act.

2. The plaintiff, American Trucking Associations, Inc., is a membership corporation organized under the laws of the District of Columbia as the national trade organization of the motor carrier industry, and has its principal place of business in the District of Columbia. Its membership comprises approximately thirty thousand carriers engaged in interstate commerce and subject to regulation under the Motor Carrier Act. It is owned and
2 managed by the industry and acts for the industry in matters of general and national importance, including matters arising before the Interstate Commerce Commission, and by reason thereof did represent said industry in all of the pro-

ceedings before the Interstate Commerce Commission involving hours of service of employees of common and contract carriers, and particularly the proceedings entitled "MC C–139" and "Ex Parte MC–28," hereinafter referred to, and was a proper party in those proceedings. It brings this action as a party in interest and as representative of a class of persons having a common interest in and alike affected by the subject matter who are too numerous to be brought before the Court.

3. The plaintiff, Barnwell Brothers, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices at Burlington, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, plaintiff is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 trucks, employs 380 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $500,000.

4. The plaintiff, The Baltimore Transfer Company of Baltimore City, is a corporation organized under the laws of the State of Maryland, having its general offices at Baltimore, Maryland, and its principal operating office for Washington, D. C., at 128 Q St. NE. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from New York City to Petersburg, Virginia, both included, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 motor vehicles, employs 285 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $400,000.

5. The plaintiff, Brooks Transfer and Storage Company, is a corporation organized under the laws of the State of Vir-
3 ginia, having its headquarters and principal place of business at Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, used household goods to, from, and between various points and places in all states East of the Mississippi River, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 65 vehicles, employs 100 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of $125,000.

6. The plaintiff, Brooks Transportation Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at Richmond, Virginia, and its principal operating office for Washington, D. C., at 9 L St. SW. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, it is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 99 trucks, employs 250 employees, of which approximately one-half are employees whose duties do not affect safety of operation of motor vehicles, and has an average annual pay roll of approximately $350,000.

7. As more particularly appears hereinafter, the defendant Interstate Commerce Commission issued an order under date of June 15, 1939, in a matter entitled before it as "MC C–139," denying a petition filed by the plaintiffs to exercise its jurisdiction to hold hearings and receive evidence and to prescribe qualifications and maximum hours of service of employees whose duties had no relation to safety of operation of motor vehicles. The said order is based upon a supposed lack of power to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle. The said Commission's conclusion is that the Motor Carrier Act invested it with power to establish such requirements only with respect to those employees whose duties affect the safety of operation of motor vehicles. The plaintiffs allege that the said Commission was plainly invested with power to establish such requirements with respect to all employees of such carriers, that it erroneously construed the Motor Carrier Act, and that the said order is invalid and should be annulled and set aside as being based upon an error or mistake of law. The plaintiffs further allege that the order is invalid and should be annulled and set aside as being arbitrary and capricious in that the said Commission refused to hold a hearing, receive testimony, and consider the merits of the case. Thus, the plaintiff say, that the Commission's action is erroneous and arbitrary and that it should be compelled to take jurisdiction of the said petition, consider the merits of the case, and exercise a sound discretion in prescribing such reasonable regulations as it may find to be necessary or proper.

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8. The business of transporting passengers and property in interstate and foreign commerce by motor vehicle for hire has long been recognized as one impressed with public interest and requiring regulation to eliminate unfair and destructive competitive practices, to promote economical and efficient service, and to establish standards of safety for the protection of the public.

The National Industrial Recovery Act (15 U. S. C. 701), was enacted by Congress for the declared purpose of correcting disorganization of industry, removing obstructions to the free flow of commerce, reducing unemployment, improving standards of labor, and eliminating unfair competitive practices. Under the said Recovery Act a code of fair competition for the trucking industry was approved on February 10, 1934, as approved Code No. 278. Among other things, the Code of Fair Competition for the Trucking Industry contained provisions for maximum hours of service for all classes of employees, and provisions for exemptions, exceptions, and qualifications based upon the problems peculiar to the business and the different types of motor carrier operations. While the said Code was still taken and considered to be in full force and effect, the Congress began consideration of legislation to regulate transportation of passengers and property by motor vehicle in interstate and foreign commerce as a part of and in correlation with the regulation of other types of transportation agencies. The Congress enacted the Motor Carrier Act, and vested the jurisdiction in the Intersfate Commerce Commission to regulate such transportation and the facilities thereof, making the said Act Part II of the Inter-
5 state Commerce Act. In and by sections 202 (a), (b), and 204 (a), (1), (2), (3), and 204 (b), of the Motor Carrier Act, which are here quoted for the convenience of the Court, it is provided:

"DECLARATION OF POLICY AND DELEGATION OF JURISDICTION

"SEC. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

"(b) The provisions of this part apply to the transportation of passengers or property by motor carriers engaged in interstate or

foreign commerce and to the procurement of and the provision of facilities for such transportation, and the regulation of such transportation, and of the procurement thereof, and the provision of facilities therefor, is hereby vested in the Interstate Commerce Commission."

"GENERAL DUTIES AND POWERS OF THE COMMISSION

"SEC. 204. (a) It shall be the duty of the Commission—

"(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event that such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205; 220; 221; 222 (a), (b), (d), (f), and (g); and 224."

* * * * *

"SEC. 204. (b) The provisions of any code of fair competition for any industry embracing motor carriers or for any subdivision thereof approved pursuant to the National Industrial Recovery Act or any present or future Act amendatory thereof, or supplementary thereto, or in substitution therefor, which is in conflict or inconsistent with any action under the provisions of this part, shall have no force or effect after this section becomes effective."

6 9. In or about July of 1936, the defendant Interstate Commerce Commission instituted a proceeding to consider the matter of maximum hours of service of employees of common and contract carriers under the Motor Carrier Act. This proceeding was entitled "Ex Parte MC-2," and is reported in 3 M. C. C. 665, 6 M. C. C. 555, and 11 M. C. C. 203. As the

result of its consideration of the subject, the said Commission prescribed qualifications and maximum hours of service of drivers of motor vehicles operated by common and contract carriers. It expressed some doubt as to its jurisdiction to prescribe qualifications and maximum hours of service for other employees of such carriers, but did not undertake to pass upon the question.

10. After the Fair Labor Standards Act (29 U. S. C. 201, et seq.) became effective, the defendant Interstate Commerce Commission instituted a proceeding to determine the extent of its jurisdiction over employees of common, contract, and private carriers under Section 204 (a) of the Motor Carrier Act, entitling the said proceeding as "Ex Parte No. MC-28." By virtue of the provision in Sec. 13 (b) of said Fair Labor Standards Act exempting as to hours of service, employees with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, the defendant Interstate Commerce Commission gave notice in said proceeding that it would determine the extent of its jurisdiction to establish such requirements for employees of common and contract carriers. Without taking any testimony as to what, if any, requirements should be imposed at this time with respect to such employees other than drivers of motor vehicles, the said Commission set the matter down for argument, and undertook to decide its jurisdiction in said proceeding solely on the basis of deciding a question of law, and of thereby determining the extent of its jurisdiction. After receiving briefs and hearing arguments upon the question so raised by it, the defendant Interstate Commerce Commission issued a report and entered an order in said Ex Parte No. MC-28 on the 9th day of May 1939, in and by which it expressed the conclusion that it had no jurisdiction to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle other than for those employees whose activities affect the safety of operation of motor vehicles, and by virtue of its conclusions so recited in the report discontinued the proceeding. A copy of the said report and order it attached hereto, marked "Exhibit A," and prayed to be taken and considered as a part hereof.

11. Being advised that the action of the defendant Interstate Commerce Commission in discontinuing the said proceeding entitled Ex Parte MC-28 was merely advisory and not, insofar as they were concerned, a determination of the issue involved, the plaintiffs, feeling that there was and is a present need for the said Commission to exercise its jurisdiction and prescribe reasonable require-

ments with respect to qualifications and maximum hours of service of those employees of common and contract carriers by motor vehicle whose duties do not affect the safety of operation of motor vehicles, filed a petition with the said Commission, setting forth some of the grounds or reasons why such requirements should be established, and praying that the Commission exercise its jurisdiction with respect to the subject matter, disregard its opinion expressed in said Ex Parte MC–28, hold hearings and establish such reasonable requirements as might be made to appear to it to be necessary or proper in the exercise of a sound judgment or consideration of the matter. A copy of said petition is attached hereto, marked "Exhibit B," and prayed to be taken and considered as a part hereof. When filed, said petition was entitled before the said Commission as No. MC C–139. Under date of June 15, 1939, the defendant Interstate Commerce Commission handed down a report and order in MC C–139 in and by which it denied the said petition upon the ground that, for the reasons set forth in its report of May 9, 1939, in Ex Parte No. MC–28, it lacked the power to prescribe the regulations sought. In its view of the matter, the Commission deemed it to be futile to hold hearings as requested in and by the petition and thus declined to consider the matter upon the merits. A copy of said report and order is attached hereto, marked "Exhibit C" and prayed to be taken and considered as a part hereof.

12. The plaintiffs allege that the said order of the defendant Interstate Commerce Commission in MC C–139 is illegal and void, and should be annulled and set aside, in that:

8 (a) The Motor Carrier Act plainly invests the said Commission with the power and duty to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

(b) The said Commission arbitrarily undertook to construe section 204 (a) (1) and (2) when there was and is no ambiguity in the said section or inconsistency with other sections of the Motor Carrier Act which would require or warrant construction, and in so doing, read into the said section words and meaning not contained therein.

(c) The said Commission erred in construing the said section 204 (a) (1) and (2) to mean that the power to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle is the same as that in respect of employees of private carriers by motor vehicle, provided for in section 204 (a) (3), thus disregarding differences between the respective provisions of the

statute, and fundamental differences in its general jurisdiction over common and contract carriers as opposed to its limited jurisdiction over private carriers.

(d) If the said Commission properly undertook to construe the said section 204 (a) (1) and (2), it erred in not holding that the said section was designed to and did invest it with power to prescribe such requirements with respect to all employees of common and contract carriers by motor vehicle, particularly in view of the legislative history of the Motor Carrier Act, and other contemporaneous and related acts.

(e) The said Commission arbitrarily and capriciously refused to hold a hearing, receive testimony, and consider the merits of the case.

13. The action of the defendant Interstate Commerce Commission in issuing its said order of June 15, 1939 in MC C–139 is injurious to the plaintiffs and others similarly situated, and unless the said order is annulled and set aside they will suffer great and irreparable loss and damage, in that:

(a) They are being subjected to demands for compliance with the inflexible statutory provisions in the Fair Labor Standards Act, under which coordination of transportation service with other carriers, all of which are exempted therefrom,
9 and the rendering of adequate public service will be impossible, thereby depriving plaintiffs of a substantial portion of their business.

(b) They are, and will be, subjected to demands for compliance with conflicting and diverse regulations in each state and municipality in and through which their operations extend, instead of uniform regulation under the Motor Carrier Act, all of which is inconsistent with and a burden to the business of transporting interstate commerce, by reason of the provision in the Fair Labor Standards Act preserving the effectiveness of any state laws or municipal ordinances more restrictive in its terms than those imposed by the said Fair Labor Standards Act, and by reason of the State laws applicable to qualifications and maximum hours of service being in full force and effect until the Commission acts within the frame of the Motor Carrier Act.

(c) They will be subjected to prohibitive overtime wage penalties, regardless of the fact that the normal work wage is in no instance lower, and generally far exceeds the minimum wage provisions of the Fair Labor Standards Act, because much of the transportation service performed by them is sporadic, having peak periods and emergency demands requiring them to retain skilled employees at full pay for stand-by service, although actual working time may be as low as 30% of pay time, such as is frequently

the case in the service to oil fields, and to a lesser but important extent the same is true in the handling of household goods, and the Fair Labor Standards Act contains no provision for averaging hours of service over an adequate period of time to cover such peak periods and emergencies usual to and necessary to be met in rendering transportation service.

(d) They are, and will be, subjected to demands by employees for penalty overtime wages provided for in the Fair Labor Standards Act, both retroactively to June 25, 1938, and prospectively, thus making them liable to a multiplicity of suits.

(e) They are, and will be, subjected to the risk of large and burdensome penalties and of criminal prosecutions under the Fair Labor Standards Act and under the laws of the several states in and through which they operate.

(f) They are, and will be, subject to claims of abrogation of existing labor agreements with resulting labor controversies and the risk of strikes and disruption of service.

(g) They are, and will be, subjected to unfair and destructive competitive practices in violation of the declared purpose of the Motor Carrier Act.

Wherefore, the premises considered, the plaintiffs, and each of them, pray that:

1. The Court adjudge the order issued by the Interstate Commerce Commission under date of June 15, 1939, in MC C-139, to be illegal and void, and enter a decree annulling and setting aside the said order.

2. The Court enter a decree adjudging that the Interstate Commerce Commission is invested with the power and duty under the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

3. The Court issue a mandatory injunction requiring the defendant Interstate Commerce Commission to take jurisdiction of the plaintiffs' petition in MC C-139, consider the matter of establishing reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, and exercise a sound judgment or discretion in establishing such reasonable requirements as to it may appear to be necessary or proper.

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

Exhibit A to complaint

Interstate Commerce Commission

Ex Parte No. MC–28

JURISDICTION OVER EMPLOYEES OF COMMON, CONTRACT, AND PRIVATE MOTOR CARRIERS UNDER SECTION 204 (A) OF MOTOR CARRIER ACT, 1935

Submitted December 16, 1938. Decided May 9, 1939

Authority to prescribe qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle under section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, held limited to prescribing such regulations for those employees whose activities affect the safety of operation of motor vehicles

J. Ninian Beall, Edward S. Brashears, Reagan Sayers, Harold S. Shertz, Howell Ellis, Robert M. Davitt, Irving C. Fox, John R. Turney, Jr., Ivan Bowen, for carriers and associations of carriers; and Joseph A. Padway, David Kaplan, O. David Zimring, for organized labor.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order entered November 2, 1938, we instituted this proceeding on our own motion for the purpose of determining the extent of our jurisdiction under section 204 (a) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle, and private carriers of property by motor vehicle. In our decision in Ex Parte No. MC–2, Maximum Hours of Service of Motor Carrier Employees, 3 M. C. C. 665, we indicated that in our view our jurisdiction under that section of the Motor Carrier Act extended only to employees whose activities affect the safety of operation of motor vehicles.

Since our decision in the case cited, the Fair Labor Standards Act became effective. Section 13 (b) of that act reads as follows:

"The provisions of section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and

maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935; or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act."

Because of this exemption in the Fair Labor Standards Act, the question of whether our jurisdiction under section 204 (a) of the Motor Carrier Act, 1935, extends to all employees of carriers, or only to those whose activities affect the safety of operation of motor vehicles, becomes of great importance to carriers and employees alike. Therefore, this proceeding was instituted. We gave interested parties an opportunity to file briefs, and heard them in oral argument.

Representatives of common and contract carriers, with one exception, assert that our jurisdiction under section 204 (a) (1) and (2) extends to all employees of common and contract carriers, and is not limited to those employees whose activities affect the safety of operation. Representatives of organized labor, on the other hand, contend that our jurisdiction is limited to employees whose activities affect the safety of operation.

All agree that our jurisdiction under section 204 (a) (3), because of the different wording of that section, extends only to those employees of private carriers of property whose activities affect the safety of operation.

Section 204 (a) (1) of the Motor Carrier Act reads as follows:

"It shall be the duty of the Commission—(1) to regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements
13 with respect to continuous and adequate service, transportation of baggage and express, uniform system of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment."

The last two phrases of section 204 (a) (2) in respect of our powers over contract carriers are identical with those above quoted from the section relating to common carriers.

Section 204 (a) (3) reads as follows:

"To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e); 205, 220; 221–222 (a); (b), (d), (f), and (g); and 224."

We shall first dispose of the limited question of the extent of our power to prescribe qualifications and maximum hours of serv-

ice for employees of private carriers of property, using the word "power" herein in view of the fact that it is the word used in the exemption contained in section 13 (b) of the Fair Labor Standards Act quoted above. Because of the precise wording of section 204 (a) (3) we have no doubt that our power under that section is limited to prescribing qualifications and maximum hours of service for those employees only whose activities affect the safety of operation of motor vehicles engaged in transporting property in interstate and foreign commerce. It is clear to us that we have power to prescribe qualifications and maximum hours for drivers and their helpers employed by private carriers of property who are engaged in driving or operating motor vehicles transporting property in interstate and foreign commerce.

14 It may be that the activities of other employees are such that "to promote safety of operation" we have power to prescribe qualifications and maximum hours of service for them. As to what classes or types of employees, if any, may be included in this category, we do not decide here.

It is to be noted that the language of section 204 (a) (1) and (2) differs from that used in section 204 (a) (3) primarily because the phrase "to promote safety of operation" does not appear in these first two mentioned paragraphs. Representatives of the carriers contend that the language used is clear, simple, and unambiguous. They rely on one of the well-established rules of statutory construction that where such language is used it must be construed according to its terms. This rule is briefly stated by the Supreme Court of the United States in the case of Caminetti v. United States, 242 U. S. 470, at page 485, as follows:

"It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms."

It is to be noted that the word "employees" is not modified or limited in any manner, and it is therefore contended that the term includes all employees irrespective of the character of the employment. If this interpretation were sound, our power would extend to prescribing maximum hours of service not only for those employees whose activities affect the safety of operation, but to such employees as stenographers, clerks of all classes, foremen, superintendents, salesmen, and employees acting in an executive capacity.

15 There are, however, well established exceptions to the rule of statutory construction relied upon by the carriers. In the case of Ozawa v. United States, 260 U. S. 178, the court said:

"It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words

their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

In the case of Sorrells v. United States, 287 U. S. 435, the Supreme Court had occasion to consider this rule and amplify the views expressed in the Ozawa case. In its decision the court said:

"Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. In United States v. Palmer, 3 Wheat. 610, 631, Chief Justice Marshall, in construing the Act of Congress of April 30, 1790, section 8 (1 Stat. 113) relating to robbery on the highseas, found that the words 'any person or persons' were 'broad enough to comprehend every human being,' but he concluded that 'general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them.' In United States v. Kirby, 7 Wall. 482, the case arose under the Act of Congress of March 3, 1825 (4 Stat. 104), providing for the conviction of any person who 'shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier * * * carrying the same.' Considering the purpose of the statute, the Court held that it had no application to the obstruction or retarding of the passage of the mail or of its carrier by reason of the arrest of the carrier upon a warrant issued by a state court. The Court said: 'All laws should receive a sensible construction. General terms should be so limited in their application as not to lead
16 to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' And the Court supported this conclusion by reference to the classical illustrations found in Puffendorf and Plowden. Id., pp. 486, 487.

"Applying this principle in Lau Ow Bew v. United States, 144 U. S. 47, the Court decided that a statute requiring the permission of the Chinese government, and identification by certificate, of 'every Chinese person other than a laborer,' entitled by treaty or the act of Congress to come within the United States, did not apply to Chinese merchants already domiciled in the United States, who had left the country for temporary purposes, animo revertendi, and sought to reenter it on their return to their business and their homes. And in United States v. Katz, 271 U. S.

354, 362, construing section 10 of the National Prohibition Act so as to avoid an unreasonable application of its words, if taken literally, the Court again declared that 'general terms descriptive of a class of persons made subject to a criminal statute may, and should be, limited where the literal application of the statute would lead to extreme or absurd results, and where the legislative purpose gathered from the whole Act would be satisfied by a more limited interpretation.'" See, to the same effect, Heydenfeldt v. Daney Gold Mining Co., 93 U. S. 634, 638; Carlisle v. United States, 16 Wall. 147, 153; Oates v. National Bank, 100 U. S. 239; Chew Heong v. United States, 112 U. S. 536, 555; Holy Trinity Church v. United States, 143 U. S. 457, 459–462; Hawaii v. Mankichi, 190 U. S. 197, 212–214; Jacobson v. Massachusetts, 197 U. S. 11, 39; United States v. Jin Fuey Moy, 241 U. S. 394, 402; Baender v. Barnett, 255 U. S. 224, 226; United States v. Chemical Foundation, 272 U. S. 1, 18.

Other decisions to the same effect could be quoted and cited, but we deem the foregoing sufficient.

In the argument before us representatives of carriers dealt only with the phrase "maximum hours of service of employees." It cannot be overlooked, however, that wherever that phrase is used it is preceded by the word "qualifications," so that the entire phrase reads "qualifications and maximum hours of service of employees." It necessarily follows that if we have the
17 power to prescribe maximum hours of service for all employees we likewise have the power and duty to prescribe qualifications for all types of employees.

We found it a comparatively simple task to prescribe qualifications, from the point of view of safety of operation, for those employees of common and contract carriers who are engaged in driving and operating motor vehicles in interstate and foreign commerce, in our order of December 23, 1936, in Motor Carrier Safety Regulations, 1 M. C. C. 1. By rule 1, part I of those safety regulations, we prescribed:

* * * * *

"3. On and after July 1, 1937, no motor carrier shall drive, or require or permit any person to drive, any motor vehicle operated in interstate or foreign commerce, unless the person so driving possesses the following minimum qualifications:

"(a) Good physical and mental health.

"(b) No physical deformity or loss of limb likely to interfere with safe driving.

"(c) Good eyesight in both eyes (either without glasses, or by correction with glasses), including adequate perception of red and green colors.

"(d) Adequate hearing.

"(e) Experience in driving some type of motor vehicle (including private automobiles) for not less than one year, including experience throughout the four seasons.

"(f) Competency by reason of experience or training to operate safely the type of vehicle or vehicles which he drives.

"(g) Knowledge of rules and regulations issued by the Commission under the Motor Carrier Act, 1935, pertaining to the driving of motor vehicles.

"(h) Shall not be addicted to the use of narcotic drugs.

18 "(i) Shall neither use, nor be under the influence of, any alcoholic liquor or beverage while on duty, nor otherwise make excessive use thereof.

"(j) Not less than 21 years of age, unless the person was engaged in so driving on July 1, 1937, or within one year prior thereto, but in no case less than 18 years of age.

"(k) Ability to read and speak the English language, unless the person was engaged in so driving on July 1, 1937, or within one year prior thereto, but in any case ability to understand traffic and warning signs."

The qualifications for drivers so prescribed, for the particular purpose in view, have been accepted by the industry as practical and reasonable, and have been adopted by the officials of a number of States. Our experience and the study we necessarily made in connection with the administration of the Motor Carrier Act qualify us to prescribe such regulations to promote safety of operation. Quite the contrary would be true if we were called upon to prescribe general qualifications for all employees of such carriers. In the case of clerks, salesmen, and employees acting in an executive capacity, physical infirmities have little, if any, effect upon the ability of an employee to perform satisfactory work. Education and training are important qualifications for such employment, but other and more intangible factors are of like importance. An employee's personality, appearance, ambition, and industry are valuable and important attributes. It would be a very difficult task, and one wholly foreign to the Commission's normal functions, to prescribe standards for such qualifications. It is our opinion that if the statute is interpreted to give us the power to prescribe general qualifications for all employees, it would lead to an unreasonable, if not an absurd, result, and we

19 must, therefore, under the rule of statutory construction already referred to, determine the intent of Congress from the legislative history of the enactment and consideration of the purposes of the act as a whole.

The bill which later became the Motor Carrier Act, 1935, when it was reported by the Committees of both the Senate and House of Representatives did not contain the provisions in section 204

which are here involved. That section then made no reference to qualifications and maximum hours of service of employees. The only reference to those matters was found in section 225, and there the only authority given us was to investigate and report on the need for Federal regulation. Section 204 was amended on the Senate floor to its final form, and the debate on this amendment was brief. The amendment was later adopted by the House. The chairman of the Interstate Commerce Committee of the Senate, who submitted the amendment in behalf of that Committee, made a statement which appears at page 5887 of Volume 79 of the Congressional Record. He pointed out that in the bill as reported the function of the Commission was merely to investigate and report to Congress. In speaking of the Committee's amendment, he added, "then we gave them the power in section 204." In that statement the chairman referred to the testimony of a member of this Commission before the Senate committee, and indicated that the action of the committee was primarily based upon this statement. An examination of the testimony of the Commissioner, who was at that time chairman of our legislative committee, discloses that he dealt with the subject of qualifications and maximum hours of service of employees from the standpoint of safety, and safety alone. There is, further, the negative evidence that nothing can be found in the Congressional debates on the measure nor in the statements of those who appeared at the prior committee hearings, nor in the entire history of the act, which warrants the conclusion that it was ever the intent to give the Commission power, extending far beyond its normal functions, to prescribe qualifications and maximum hours of service of employees for general social, economic, or business purposes. While the legislative history of this particular provision is meager, it clearly indicates that these particular provisions of section 204 were intended to relate to the safety of operation of motor vehicles.

Section 204 (a) (1) and (2) deals primarily with the usual subjects of regulation such as continuous and adequate service, transportation of baggage and express, uniform system of accounts, records, and reports, and the preservation of records. Then follows the phrase "qualifications and maximum hours of service of employees and safety of operation and equipment." Reading this last phrase as a whole, and in view of the legislative history and the general purpose of the act, it seems clear that the intent of Congress was that our power in these regards should be limited to employees whose activities affect the safety of operation.

This view is further supported by the situation which confronted Congress at the time of the enactment. The use of motor vehicles had increased in this country to such an extent that many thou-

sands of persons were killed and hundreds of thousands injured each year in motor accidents. This situation was undoubtedly in the mind of Congress. Congress was also aware of the fact that many States had enacted statutes prescribing maximum
21 hours of service for drivers of motor vehicles operated in intrastate commerce by for-hire carriers. An examination of the State statutes in effect at the time of the enactment of the Motor Carrier Act discloses that while 43 States had enacted statutes prescribing maximum hours of service for drivers of motor vehicles operated by for-hire carriers, none of these statutes dealt with maximum hours of other employees. It is reasonable to assume that Congress intended by the provisions of section 204 to give the Commission the same authority over carriers engaged in interstate commerce that the State governments had found it expedient to exercise as to carrier engaged in intrastate commerce.

The legislative history of the Fair Labor Standards Act likewise should be considered. In that statute Congress dealt with maximum hours and minimum wages of employees generally. It is part of the history of the times that Congress held lengthy debates lasting over two sessions before the legislation was enacted, and that, by statute, it fixed the maximum hours and minimum wages and did not leave those important questions to an administrative tribunal. This being so, we cannot believe that the Congress intended by the brief provisions of section 204, enacted after the limited debate indicated above, to give us the broad power to prescribe qualifications and maximum hours of service for all employees of motor carriers.

Further, it is to be noted that neither in the Fair Labor Standards Act, nor any other Federal or State enactment with which we are familiar, has an administrative body been empowered to prescribe general qualifications for all classes of employees.

Finally, it is worthy of consideration that the only standard which section 204 provides for our guidance in prescribing qualifications and maximum hours of service is to be found in the
22 word "reasonable." Such a standard is sufficient in dealing with safety of operation or other matters where there is an extensive background of experience and precedent, but it is inconceivable that Congress would have deemed that single word sufficient if it had expected us to enter the new and unexplored field of fixing qualifications and maximum hours of service of all employees for general social, economic, or business purposes.

For the reasons stated, we conclude that our power under section 204 (a) (1) and (2) is limited to prescribing qualifications and maximum hours of service for those employees of common and contract carriers whose activities affect the safety of operation of motor vehicles engaged in transporting passengers and

property in interstate and foreign commerce, and for the purpose of promoting such safety of operation. That power undoubtedly extends to drivers of such vehicles. It may well be that the activities of some employees other than drivers likewise affect the safety of operation of motor vehicles engaged in interstate and foreign commerce. If common and contract carriers, or private carriers of property, or their employees believe that the activities of employees other than drivers affect the safety of operation of motor vehicles engaged in interstate and foreign commerce, they may file an appropriate petition, asking that a hearing be held and the question determined.

Ex Parte No. MC–2 is a proceeding instituted on our own motion for the purpose of prescribing reasonable regulations governing the maximum hours of service of employees of common and contract carriers engaged in the transportation of passengers or
23 property in interstate or foreign commerce. At the argument in that case, counsel for the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, contended that, while our authority to prescribe maximum hours of service for common and contract carriers was limited to those employees whose activities affect the safety of operation, we may, when that class has been ascertained, consider other factors in determining the maximum hours to be prescribed. He referred to general economic and sociological factors, including the general unemployment situation. In our report in that case under date of January 27, 1939, Maximum Hours of Service of Motor Carrier Employees, 11 I. C. C. 203, we said, at page 212:

"We find it unnecessary here to express our views on that question because, as we pointed out in the prior report, no evidence has been submitted as to this matter. In our decision in Ex Parte No. MC–28, which involves the extent of our jurisdiction under the provisions of section 204 of the Motor Carrier Act, 1935, we may determine whether factors other than the safety of operation may be considered in prescribing maximum hours of service for motor carrier employees."

We have reached here the conclusion that our jurisdiction under section 204 (a) (1), (2), and (3) is limited to prescribing maximum hours of service for employees whose activities affect the safety of operation. At the oral argument in Ex Parte No. MC–2 attention was directed to the provisions of section 202 (a) of the Motor Carrier Act, and particularly to that part which reads as follows:

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such a manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest."

It was argued that "to foster sound economic conditions in such transportation and among such carriers in the public interest" we should consider general economic and unemployment conditions and sociological factors. There is no indication that the hours of service of employees, when regulated solely with a view to safety of operation, are affected either directly or indirectly by such factors. The provisions of section 202 evince a clear intent of Congress to limit our jurisdiction to regulating the motor carrier industry as a part of the transportation system of the nation. To extend that regulation to features which are not characteristic of transportation nor inherent in that industry strikes us as an enlargement of our jurisdiction unwarranted by any express or implied provision in the act, which vests in us all the powers we have.

24

The proceeding will be discontinued.

Commissioner ALLDREDGE concurs in the result.

ROGER, Commissioner, dissenting:

I am convinced that as a mater of law the Motor Carrier Act confers jurisdiction on this Commission over the hours of service of all employees of common and contract carriers in language which is so clear and unambiguous that it is not open to the construction give it in this proceeding.

I am authorized to state that Commissioner LEE concurs in this expression.

Commissioner AITCHISON did not participate in this proceeding.

25

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 9th day of May, A. D., 1939

Ex Parte MC-28

IN THE MATTER OF JURISDICTION OVER EMPLOYEES OF COMMON, CONTRACT, AND PRIVATE MOTOR CARRIERS UNDER SECTION 204 (A) OF THE MOTOR CARRIER ACT, 1935.

It appearing, That by order entered the 2nd day of November, A. D., 1938, the Commission instituted the above proceeding on its own motion, to determine the extent of its jurisdiction over employees of common, contract, and private motor carriers, under section 204 (a) of the Motor Carrier Act, 1935, and

It further appearing, That a full consideration of the question involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

26 *Exhibit B to complaint*

Before the Interstate Commerce Commission, Washington, D. C.

PETITION

For the exercise of jurisdiction, hearings, and regulations under Section 204 (a) (1) and (2) of Part II of the Interstate Commerce Act, to prescribe regulations covering qualifications and hours of service of employees, taking into consideration economic and competitive factors, and without limiting such regulations to matters concerning safety of operations.

* * * * *

Petitioners respectfully represent to the Commission:

That petitioner, American Trucking Associations, Inc., is a membership corporation under the laws of the District of Columbia, and that it is the n[illegible] organization of the trucking industry, and is owned by, an[illegible]ated on behalf of said industry, and maintains its general offices at 1013 Sixteenth Street NW., Washington, D. C. That many members of this Association, their names being too numerous to mention here, are engaged in the business of transporting property in interstate commerce by motor vehicle, and are thereby subject to the jurisdiction of the Commission, and to such rules and regulations as the Commission may prescribe under Section 204 (a) (1) and (2) of Part II of the Interstate Commerce Act.

That petitioner, Barnwell Brothers, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices on Hawkins Street, in Burlington, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, petitioner is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 trucks, employs 380 employees, of which approximately one-half are truck drivers, and has an average annual pay roll of $500,000.

That petitioner, The Baltimore Transfer Company of Baltimore City, is a corporation organized under the laws of the State of Maryland, having its general offices at Monument Street and

Guilford Avenue, Baltimore, Maryland. It is engaged in the business of transporting, as a common carrier by motor
27 vehicle, general merchandise to, from, and between various points and places from New York City to Petersburg, Virginia, both included, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 150 motor vehicles, employs 285 employees, comprising 129 truck drivers, 84 helpers, 48 office workers, and 24 shopmen, and has an average annual pay roll of $400,000.

That petitioner, Brooks Transfer and Storage Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at 1301 North Boulevard Street, Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, used household goods to, from, and between various points and places in all states East of the Mississippi River, and by reason of such operations, is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 65 vehicles, employs 100 employees, comprising 65 truck drivers and 35 clerical and other nondriving employees, and has an average annual pay roll of $125,000.

That petitioner, Brooks Transportation Company, is a corporation organized under the laws of the State of Virginia, having its headquarters and principal place of business at 1301 North Boulevard Street, Richmond, Virginia. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from North Carolina to New York, both included, and by reason of such operations, it is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It operates 99 trucks, employs 250 employees, comprising 125 truck drivers and 125 clerical, garage, and other nondriving employees, and has an average annual pay roll of approximately $350,000.

That petitioner, Horton Motor Lines, Inc., is a corporation organized under the laws of the State of North Carolina, having its general offices at 913 West Hill Street, Charlotte, North Carolina. It is engaged in the business of transporting, as a common carrier by motor vehicle, general merchandise to, from, and between various points and places from Charlotte, N. C., to New York City, N. Y., and Pittsburgh, Pa., and by reason of such operations is subject to the jurisdiction of the Interstate Commerce Commission under the Motor Carrier Act. It employs
28 all classes of employees usual to motor carrier operations, including many employees whose duties are not related to safety of operations.

That there is need in the interest of the public and of the petitioners for the exercise by the Commission of its jurisdiction and judgment within the frame of the Motor Carrier Act to prescribe, now, and from time to time as need may be found, qualifications and maximum hours of service of all classes of employees, taking into consideration the economic and competitive factors affecting the industry, and other factors of general public interest and without limiting or restricting such rules or regulations to matters concerning safety of operations, as has heretofore been limited and provided by the Commission in proceedings in Dockets Ex Parte MC–2, Ex Parte MC–4, and Ex Parte MC–28, and reports and orders issued in connection therewith, and petitioners are ready, able, and willing to furnish competent and relevant evidence on each point.

That the need of further regulation prayed herein arises from the necessity for:

(1) The establishment of uniform regulations to supersede conflicting state laws and municipal regulations covering both qualifications and maximum hours of service of employees, excepting employees whose duties are related to safety of operations.

(2) The correlation of motor-carrier service with the service of other transportation agencies now exempt from the Fair Labor Standards Act, excepting employees whose duties are related to safety of operations.

(3) The prevention of unfair competitive practices within the industry due to unfair labor practices, excepting employees whose duties are related to safety of operations.

(4) The promotion of sound economic conditions in both carrier and public interest by providing suitable rules and regulations other than safety regulations, governing the handling of property by self-appointed gangs of so-called "public workers" which assume the right to take charge of the loading and unloading of vehicles at public stations, wharves, docks, and warehouses, and prevent the service from being performed by the regular employees of the carrier, and due to the fact that these "public workers" are without contracts for employment and the identity of the individual loaders being unknown, and not being ascertainable by the carrier, such practice results in loss and damage
29 to goods, and increases the operating expenses and loss and damage claims borne directly by the carriers, and indirectly by the public.

(5) The establishment of uniform rules and regulations in the public interest in connection with the handling of milk and foodstuffs to the end that such handling may not be done by persons suffering from communicable diseases.

Petitioners respectfully request the Commission to hold hearings or otherwise determine now, and from time to time, reason-

able regulations for the purposes enumerated herein below, and to put such reasonable regulations into effect covering the following subjects:

(a) Maximum hours of service of all classes of employees who are now subject to conflicting state laws and municipal regulations in the absence of federal regulations except employees whose duties are related to safety of operations.

(b) Maximum hours of service for all classes of employees, except those whose duties are related to safety of operations, and whose duties and hours are necessarily correlated in operations with the maximum hours of service applicable to other employees whose duties are related to safety regulations.

(c) Maximum hours of service for all classes of employees except those whose duties involve safety of operations, whose employment is related to transportation service performed in connection with any other transportation agency which is exempt from the Fair Labor Standards Act.

(d) Maximum hours of service for all classes of employees heretofore regulated under the provisions of the Code of Fair Competition for the trucking industry, promulgated under the National Industrial Recovery Act, except employees whose duties are related to safety of operations.

(e) Qualifications of employees handling milk and other foodstuffs, or working in or about places and vehicles where milk and unprotected foodstuffs are stored or transported, to prevent the employment of persons suffering from communicable diseases.

Petitioners pray the Commission:

(1) to exercise its jurisdiction with respect to the subject matters herein set forth, and to receive evidence in connection therewith;

(2) to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers, except employees whose duties are related to safety of operations;

(3) to disregard its report and order in Ex Parte MC–28.

Respectfully submitted.

AMERICAN TRUCKING ASSOCIATIONS, INC.,
BARNWELL BROTHERS, INCORPORATED,
BROOKS TRANSFER AND STORAGE COMPANY,
BROOKS TRANSPORTATION COMPANY,
THE BALTIMORE TRANSFER CO. OF BALTIMORE CITY,
HORTON MOTOR LINES, INC.,

By J. NINIAN BEALL, *Attorney for Petitioners.*

Dated at 1013 16th St. NW., Washington, D. C., June 9, 1939.

31 *Exhibit C to complaint*

Interstate Commerce Commission

No. MC C-139

QUALIFICATIONS AND HOURS OF SERVICE FOR MOTOR CARRIER EMPLOYEES

Submitted June 9, 1939. Decided June 15, 1939

Petition to Prescribe Qualifications and Maximum Hours of Service for Employees of Motor Carriers Whose Activities do not Affect Safety of Operation—Denied for Lack of Power

J. Ninian Beall for petitioners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order dated November 2, 1938, we instituted on our own motion a proceeding known as Ex Parte No. MC-28 for the purpose of determining the extent of our power under section 204 (a) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of employees of common and contract carriers by motor vehicle. We gave interested parties an opportunity to file briefs and heard them in oral argument.

Upon careful consideration, we issued a report in Ex Parte No. MC-28, dated May 9, 1939, wherein we reached the conclusion for reasons therein fully stated that our power under section 204 (a) (1), (2), and (3) of the Motor Carrier Act, 1935, is limited to prescribing maximum hours of service for employees whose activities affect the safety of operation.

Under date of June 9, 1939, the American Trucking Associations, Inc., Barnwell Bros., Inc., Brooks Transfer & Storage Company, Brooks Transportation Company, The Baltimore Transfer Company of Baltimore City, and Horton Motor Lines, Inc., filed a petition requesting us to hold hearings and prescribe maximum hours of service for employees of motor carriers subject to the act whose duties in no way affect the safety of operation of motor vehicles.

For the reasons fully set forth in our report of May 9, 1939, in Ex Parte No. MC-28, which is hereby referred to and made a part of hereof, we find that section 204 (a) of the Motor Carrier Act, 1935, does not empower us to prescribe maximum hours of

service for employees of motor carriers whose activities do not affect the safety of operation. Because of this lack of power it would be futile to hold hearings as requested by the petition, and the petition is denied. An order to that effect will be entered.

Commissioners LEE and ROGERS dissent.

Commissioner AITCHISON being necessarily absent did not participate in the disposition of this proceeding.

32 ORDER

At a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 15th day of June A. D. 1939.

No. MC C–139

QUALIFICATIONS AND HOURS OF SERVICE FOR MOTOR CARRIER EMPLOYEES

It appearing, That on June 9, 1939, the American Trucking Associations, Inc., et al., filed a petition asking that the Commission prescribe maximum hours of service for motor carrier employees whose activities do not affect the safety of operation of motor vehicles, and

It further appearing, That a full consideration of the matters involved has been had and that the Commission under date hereof has made and filed a report containing its conclusions thereon which said report is hereby referred to and made a part hereof;

It is ordered, That the petition be, and it is hereby, denied.

By the Commission.

[SEAL] W. P. BARTEL, *Secretary.*

33 In United States District Court

Answer of Interstate Commerce Commission

Filed June 28, 1939

* * * * *

The Interstate Commerce Commission, defendant in the above-entitled cause, for its answer to the complaint herein, says:

I

Answering paragraphs 1 to 6, inclusive, and paragraphs 8 to 11, inclusive, of the complaint, the Commission, for the purposes of this suit, and for none other, admits that the allegations in said paragraphs contained are true.

II

Answering paragraph 7 of the complaint, the Commission admits that on or about June 15, 1939, it issued a report and order in a proceeding before it entitled MCC 139, denying the prayer of a certain petition filed by the plaintiffs, which petition is attached to the complaint as Exhibit B thereto, but the Commission denies that said paragraph 7 contains a full or correct statement of the basis for the Commission's report and order or for its conclusions therein, and respectfully refers the court to said report and order in MCC 139, true copies of which are attached to the
34 complaint herein as Exhibit C; and the Commission further denies that it was and is vested with power to establish requirements, or to prescribe qualifications and maximum hours of service of employees of motor carriers whose duties have no relation to safety of operation of motor vehicles, and the Commission further denies all other allegations in said paragraph 7 contained.

III

Further answering the complaint, and particularly paragraph 12 thereof, the Commission admits and alleges that the plaintiffs herein, on or about June 9, 1939, filed with it a complaint or petition which the Commission received, and upon the basis of which it instituted its proceeding No. MCC 139, Qualifications and Hours of Service for Motor Carriers, a true copy of which petition is attached as Exhibit B to the complaint herein; that its report and order, attached to the complaint as Exhibit C, were made and entered in said proceeding. That the plaintiff's petition, among other things, sought to have the Commission establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers except employees whose duties are related to safety of operations (the Commission having, as alleged in said complaint, already established reasonable requirements with respect to qualifications and maximum hours of service for employees whose duties are related to safety of operatic That the Commission gave consideration to said petition, is the result of such consideration, made its report and order of June 15, 1939, which are attached to the complaint as Exhibit C, which report and order, together with the Commission's report in the proceeding entitled MC-28 and attached to the complaint as Exhibit A, included the Commission's decision and conclusions in the premises; that its findings and conclusions stated in said reports were and are, and that each of them was and is, fully justified by the facts stated in said petition and the law; that prior to the

making of its decision and findings the plaintiffs submitted the determination of the issues raised by its said petition to the Commission, and the Commission alleges that its said decision and order of June 15, 1939, were not made either arbitrarily or unjustly and contrary to the law; that in making said decision and order the Commission did not violate the law or exceed its
35 authority, and it denies each of and all the allegations to the contrary contained in the complaint herein.

IV

Answering paragraph 13 of the complaint, the Commission, for the purposes of this suit, and for none other, admits that the facts therein stated are true, except that the Commission denies that its decision and order of June 15, 1939, in MCC 139 will cause irreparable loss or damage to the plaintiff or any legal loss or damage.

Further answering the complaint, except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the complaint in so far as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939.

Wherefore, having fully answered, the Commission prays that the complaint be dismissed.

INTERSTATE COMMERCE COMMISSION,
By NELSON THOMAS, *Its Attorney.*

DANIEL W. KNOWLTON,
Chief Counsel,
Of Counsel.

[*Duly sworn to by Marion M. Caskie; jurat omitted in printing.*]

36 In United States District Court

Answer of United States of America

Filed July 18, 1939

* * * * *

I

The defendant, United States of America, for the purposes of this suit and for no other, admits the allegations of the bill of complaint contained in paragraphs 1 to 6, inclusive, and paragraphs 8 to 10, inclusive; denies the allegations contained in paragraph 12.

II

Answering the allegations of paragraph 13 of the complaint, defendant denies that the Interstate Commerce Commission's order of June 15, 1939, in MC C-139 will cause irreparable damage to the plaintiff or any legal injury. The allegations of subparagraps (a), (b), (c), (d), (e), (f), and (g) of said paragraph are admitted for the purposes of this suit, and for none other, except that defendant denies that the conditions and circumstances stated in such subparagraphs are or will be, either in contemplation of law or in fact, the result of the Commission's order of June 15, 1939.

III

Answering paragraphs 7 and 11 of the complaint and further answering paragraphs 12 and 13 thereof, defendant admits and alleges that the plaintiffs herein on or about June 9, 1939, filed with the Commission a complaint or petition which the Commission received and upon the basis of which it instituted its proceeding No. MC C-139. Qualifications and Hours of Serv-
37 ice for Motor Carriers, a true copy of which petition is attached as Exhibit B to the complaint; that its report and order dated June 15, 1939, copies of which are attached to the complaint as Exhibit C were made and entered in said proceedings. Defendant alleges that the findings and conclusions stated in said report were and are, and each of them was and is, fully justified by the facts stated in said petition and the law that such report and order were not made arbitrarily or unjustly or contrary to the law; that in making said decision and order the Commission did not violate the law or exceed its authority, and defendant denies each and all the allegations to the contrary contained in the complaint herein.

IV

Except as herein expressly admitted, defendant denies the truth of each and all the allegations contained in the complaint insofar as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939.

FRANK COLEMAN,
Special Assistant to the Attorney General.

ELMER B. COLLINS,
Special Assistant to the Attorney General.

THURMAN ARNOLD,
Assistant Attorney General.

DAVID A. PINE,
United States Attorney.

38 In United States District Court

Motion for judgment

Filed August 2, 1939

* * * * *

Come now the plaintiffs, by their attorneys, and move the Court to enter a judgment upon the pleadings for the relief sought, and, in support thereof, say that:

1. The several answers of the defendants do not present a legally sufficient defense to the complaint.

2. The several answers of the defendants do not raise an issue as to any material fact.

3. The several answers of the defendants contain only conclusions and argument.

4. The plaintiffs are entitled to a judgment as a matter of law.

J. NINIAN BEALL,
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

39 In United States District Court

Motion for leave to intervene as a party defendant

Filed September 9, 1939

* * * * *

Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, moves for leave to intervene as a party defendant in this action for the purpose of asserting and maintaining the defenses set forth in his proposed answer, a copy of which is hereto attached as Exhibit "A," on the following grounds:

1. Petitioner is directly and solely responsible for the administration of the minimum wage and maximum hour provisions of the Fair Labor Standards Act.

2. Any determination of the jurisdiction of the Interstate Commerce Commission over employees of motor carriers under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, will directly affect the application of the Fair Labor Standards Act to such employees in view of Section 13 (b) of the said Fair Labor Standards Act, which provides that, "The provisions of Section 7 shall not apply with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish

qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935."

3. The basic issue involved in this action is whether certain large and important classes of employees of common and contract motor carriers are subject to the jurisdiction of the Interstate Commerce Commission under Section 204 (a) (1) and (2) of the Motor Carrier Act, or are subject to the maximum hour provisions prescribed by section 7 (a) of the Fair Labor Standards Act.

40 For the foregoing reasons petitioner has an interest in this action and seeks to assert defenses to the plaintiffs' claims presenting both questions of law and of fact which are common to the main action.

Wherefore, petitioner prays that he be allowed to intervene in the above-entitled cause as a party defendant, that he be allowed to file Exhibit "A" as an answer herein.

GEORGE A. MCNULTY,
General Counsel,
IRVING J. LEVY,
Assistant General Counsel,
JOSEPH RAUH,
Assistant General Counsel,
Attorneys for Petitioner, Elmer F. Andrews.

JOHN SKILLING,
Senior Attorney,
THOMAS H. TONGUE,
Assistant Attorney,
Of Counsel.

41 In United States District Court

Order granting leave to intervene, &c.

Filed September 9, 1939

On this 9th day of September 1939, comes now to be heard the petition of Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, for an order granting him leave to intervene in the above-entitled cause as a party defendant, and the plaintiffs and defendants having consented to the granting of the following order, it is

Ordered, adjudged, and decreed that said Elmer F. Andrews, be and hereby is granted leave to intervene in said cause as a party defendant and to file Exhibit "A" as an answer herein.

It is further ordered, adjudged, and decreed that plaintiffs' motion for judgment on the pleadings shall be considered as directed to intervenor's answer in addition to defendants' answers herein.

Dated September 9th, 1939.

(S.) JESSE C. ADKINS,
United States District Judge.

42 The American Trucking Association, Inc., Barnwell Brothers, Inc., Brooks Transfer and Storage Company, Brooks Transportation Company, The Baltimore Transfer Company of Baltimore City, Plaintiffs, consent to the entry of the foregoing order.

J. NIXIAN BEALL.
B.
ALBERT F. BEASLEY,
Attorneys for Plaintiffs.

The United States of America, defendant, consents to the entry of the foregoing order.

FRANK COLEMAN,
Special Assistant to the Attorney General.

The Interstate Commerce Commission, defendant, consents to the entry of the foregoing order.

DANIEL W. KNOWLTON,
Chief Counsel.

43 In United States District Court

[Title omitted.]

Answer of intervener

Filed September 9, 1939

For answer to the complaint in the above-mentioned cause, Elmer F. Andrews, Administrator of the Wage and Hour Division of the United States Department of Labor, intervenes as defendant herein, and says:

I

Answering paragraphs 1 to and including 6 of the complaint, intervener admits the facts alleged therein for the purposes of this suit.

II

Answering paragraph 7 of the complaint, intervener admits that an order was issued by the Interstate Commerce Commission

on or about June 15, 1939, in its proceeding entitled No. MC C–139, but denies that the Commission was vested with power to prescribe maximum hours of service for employees whose duties have no relation to safety of operation of motor carriers, and denies that said order is invalid either for the reasons alleged in paragraph 7, or for any other reasof, and further denies all other allegations in said paragraph 7.

III

Answering paragraphs 8 to and including 10, intervener admits the facts alleged therein for the purposes of this suit.

IV

Answering paragraph 11, intervener admits that plaintiffs filed a petition with the Interstate Commerce Commission praying
44 that the said Commission prescribe qualifications and maximum hours of service for employees of common and contract motor carriers whose duties do not affect the safety of operation of motor vehicles, and that the said Commission denied said petititon in MC C–139 upon the ground that it lacked the power to prescribe the regulations sought.

V

Answering paragraph 12, intervener denies the allegations therein and denies particularly that the said Commission in MC C–139 arbitrarily and capriciously refused to hold a hearing, receive testimony or consider the merits of the case, as alleged by plaintiffs in subparagraph (e), and intervener further alleges that the basic issue involved in MC C–139 was the same as that determined in Ex Parte No. MC–28 in which the said Commission held that it had no jurisdiction over employees of common and contract carriers whose duties do not affect safety of operation; that the decision in Ex Parte No. MC–28 was reached only after considering at least twenty briefs from motor carriers, labor organizations, and other interested parties, hearing oral argument by twelve attorneys representing these interests, and giving full and careful study to all questions of law involved in that proceeding; that the facts pertinent to the formulation of proper regulations concerning the qualifications and maximum hours of employees of common and contract motor carriers were fully considered by the Interstate Commerce Commission in Ex Parte No. MC–2, in the course of which hearings were held in seven cities

throughout the United States from November 19, 1936, to December 2, 1938, filling twelve volumes of records, and in Ex Parte No. MC–4 in the course of which hearings were held in nine cities from September 16, 1936, to February 18, 1939, filling eight volume of records.

VI

Answering paragraph 13, intervener admits that the plaintiffs would be required to comply with the provisions of the Fair Labor Standards Act, but denies that the requirements of the Fair Labor Standards Act would make it impossible for the plaintiffs to render adequate public service or that they would suffer irreparable damage as a result thereof. Intervener further denies that plaintiffs are, and will be, subject to claims of abrogation of existing labor agreements with resulting labor controversies and the risk of strikes and disruption of service, and asserts that the provisions of the Fair Labor Standards Act do not abrogate existing labor agreements.

VII

Further answering the complaint, except as herein expressly admitted, intervener denies the truth of each and every allegation contained in the complaint, insofar as they conflict either with the allegations herein or with the statements or conclusions set out in the Commission's said report of June 15, 1939, and insofar as they conflict with the jurisdiction of the Fair Labor Standards Act over employees of common and contract motor carriers whose duties do not affect the safety of operation of such carriers.

Wherefore, intervener prays judgment that the complaint of the plaintiffs be dismissed.

GEORGE A. MCNULTY,
General Counsel,
IRVING J. LEVY,
Assistant General Counsel,
JOSEPH RAUH,
Assistant General Counsel,
Attorneys for Intervener Elmer F. Andrews.

JOHN SKILLING,
Senior Attorney,
THOMAS H. TONGUE,
Assistant Attorney,
Of Counsel.

46 In United States Court of Appeals for the District of Columbia

[Title omitted.]

Order designating three-judge court

Filed September 23, 1939

Upon the request of Honorable Jennings Bailey, Associate Justice of the District Court of the United States for the District of Columbia, to whom application has been presented in the above-entitled cause for a writ of mandatory injunction (pursuant to the provisons of Sec. 205 (b) of the Motor Carrier Act, 1935; 49 U. S. C. A. Sec. 305 (h)) to require the defendant, Interstate Commerce Commission, to take jurisdiction of plaintiff's petition in a matter before the Commission entitled "MC C–139," in which the Commission is alleged to have issued a negative order solely because of a supposed lack of power, I hereby designate D. Lawrence Groner, Chief Justice of the United States Court of Appeals for the District of Columbia, and F. Dickinson Letts, Associate Justice of the District Court of the United States for the District of Columbia, to participate with Justice Bailey as a three-judge statutory court in hearing and determining such application.

Dated September 23, 1939.

(Signed) D. Lawrence Groner,
Chief Justice.

47 In United States District Court

Decree

Filed January 24, 1940

* * * * *

This cause coming on to be heard upon the motion of the plaintiffs for judgment upon the pleadings, and counsel for the respective defendants appearing and stating that the matter should be considered upon the pleadings as being submitted upon final hearing, and the matter having been fully argued by counsel for the respective parties, it is, upon consideration thereof, this 24th day of January 1940, by the Court,

Adjudged, ordered, and decreed, that:

1. The order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC C–139" is illegal and

void; and that the same be, and it hereby is, set aside, and held for naug t.

2. Th Interstate Commerce Commission is invested with jurisdiction nd power, under Section 204 (a) (1) and (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle.

48 3. In the matter of the jurisdiction and power of the Interstate Commerce Commission to establish reasonable requirements with respect to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicle, the Interstate Commerce Commission be, and it hereby is, required and directed to take jurisdiction, upon the plaintiffs' petition in said MC C–139, in conformance with the opinion of this Court duly filed herein as part of the record hereof.

(S.) D. LAWRENCE GRONER,
C. J., U. S. Ct. of Apps., Presiding.
(S.) JENNINGS BAILEY,
J., U. S. Dist. Ct.
Dissenting:
(S.) F. DICKINSON LETTS,
J., U. S. Dist. Ct.

49 In United States District Court

Order substituting Harold D. Jacobs as intervener

Filed February 5, 1940

* * * * *

Thomas H. Tongue, one of the attorneys for the intervener, having appeared before the Court this day, and having informed the Court that the intervener, Elmer F. Andrews, resigned from the office of Administrator, Wage and Hour Division, United States Department of Labor, during the pendency of this action which relates to the present and future discharge of the official duties of said Administrator, and that subsequently the President of the United States appointed Harold D. Jacobs to said office, in compliance with Section 4 (a) of the Fair Labor Standards Act, and said attorney having further represented to this Court, and it appearing to the Court that there is a substantial need for the continuing and maintaining of the intervention by the said Harold D. Jacobs, as successor in office to the said Elmer F.
50 Andrews, and counsel for the plaintiffs and counsel for the defendants having consented to substitution of the said

Harold D. Jacobs for the said Elmer F. Andrews, by subscribing their names to this Order, therefore, pursuant to U. S. C., Title 28, sec. 780, and Rule 25 (d) of the Rules of Civil Procedure for District Courts of the United States, it is

Ordered, adjudged, and decreed that the said Harold D. Jacobs, Administrator, Wage and Hour Division, United States Department of Labor, be and he is substituted for the said Elmer F. Andrews, as intervener herein.

It is further ordered, adjudged, and decreed that the said cause may be continued and maintained by the said Harold D. Jacobs.

Dated, February 5th, 1940.

JENNINGS BAILEY,
J., U. S. District Court.

Consented to:

J. NINIAN BEALL.
B.
ALBERT F. BEASLEY.
Attorneys for Plaintiffs.
FRANK COLEMAN,
Special Assistant to the Attorney-General,
Attorney for Defendant,
United States of America.
NELSON THOMAS.
Attorney for Defendant,
Interstate Commerce Commission.

51 In United States District Court

[Title omitted.]

Petition for appeal

Filed February 5, 1940

To the Honorable Justices of the District Court for the District of Columbia:

The United States of America, the Interstate Commerce Commission, and Harold D. Jacobs, Successor in office to Elmer F. Andrews, Wage and Hour Division, Department of Labor, Intervenor, defendants in the above-entitled case, feeling themselves aggrieved by the final decree entered by this Court on January 24, 1940, pray an appeal from said decree to the Supreme Court of the United States, in accordance with the statutory requirements.

The particulars wherein they consider the decree erroneous are set forth in the assignment of errors, accompanying this petition, and to which reference is hereby made.

Said defendants pray that a transcript of the record, proceedings, and papers on which such decree was made and entered, duly authenticated, be transmitted forthwith to the Supreme Court of the United States. Dated January 31, 1940.

DAVID A. PINE,
United States Attorney,
THURMAN ARNOLD,
Assistant Attorney General,
52 ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commission.
GEORGE A. MCNULTY,
General Counsel,
Wage & Hour Division, Department of Labor,
For Harold D. Jacobs, successor in office to
Elmer F. Andrews, Administrator.

53 In United States District Court

Assignment of errors

Filed February 5, 1940

Now come the United States, the Interstate Commerce Commission, and Harold D. Jacobs, successor in office of Elmer F. Andrews, Administrator, Wage and Hour Division of the Department of Labor, Intervener, defendants in the above-entitled cause, by their respective counsel and in connection with their appeal, file the following assignment of errors upon which they will rely in the prosecution of their appeal to the Supreme Court of the United States from the final decree of this Court entered January 1940.

The District Court erred:

(1) In holding that the order entered June 15, 1939, by the Interstate Commerce Commission in the proceeding entitled "MC C–139" is illegal and void and in setting the order aside.

(2) In holding that the Commission is invested with jurisdiction and power, under Section 204 (a) (1) (2) of the Motor Carrier Act, 1935, to establish reasonable requirements with respect

to qualifications and maximum hours of service of all employees of common and contract carriers by motor vehicles; and in
54–59 failing to hold, on the contrary, that the jurisdiction and power of the Commission under these sections of the Motor Carrier Act, 1935, is limited to those employees whose activities affect safety of operation.

(3) In requiring and directing the Commission to take jurisdiction, upon the plaintiffs' petition, the said MC C–139, in conformance with the opinion of the Court.

(4) In failing to dismiss the bill of complaint.

THURMAN ARNOLD,
Assistant Attorney General,
DAVID A. PINE,
United States Attorney,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commision.
GEORGE A. MCNULTY,
General Counsel, Wage & Hour Division, Department of Labor, for Harold D. Jacobs, Successor in office of Elmer F. Andrews, Administrator.

Dated January —, 1940.

60 In United States District Court

Opinion on petition for mandatory injunction

Filed February 5, 1940.

* * * * *

Before GRONER, Chief Judge, United States Court of Appeals, and BAILEY and LETTS, U. S. District Judges.

* * * * *

The main question we have to answer is whether defendant, Interstate Commerce Commission, has jurisdiction and power under section 204 (a) (1) and (2) of the Motor Carrier Act of 1935[1] to establish reasonable requirements with respect to qualifi-

[1] 49 Stat. 543, 49 U. S. C. A. 301, et seq.; 107A F. C. A., Tit. 49, Sec. 301, et seq.

cations and maximum hours of service for all employees of common and contract carriers by motor vehicle.

Plaintiff, American Trucking Associations, Inc., is an organization of motor carriers subject to regulation under the Act, and its principal place of business is in the District of Columbia. The other plaintiffs are common carriers by motor vehicle in interstate commerce, likewise subject to regulation.

The Motor Carrier Act, which in Part II of the Interstate Commerce Act,[2] contains a declaration of policy, as follows:

"SECTION 202 (a). It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by and regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense, and cooperate with the several states and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part."

61

The duties and powers of the Commission are described in Sec. 204 (a):

"(1) To regulate common carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service, transportation of baggage and express, uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(2) To regulate contract carriers by motor vehicle as provided in this part, and to that end the Commission may establish reasonable requirements with respect to uniform systems of accounts, records, and reports, preservation of records, qualifications and maximum hours of service of employees, and safety of operation and equipment.

"(3) To establish for private carriers of property by motor vehicle, if need therefor is found, reasonable requirements to promote safety of operation, and to that end prescribe qualifications and maximum hours of service of employees, and standards of equipment. In the event such requirements are established, the

[2] 49 U. S. C. A. 1, et seq., 10A F. C. A., Tit. 49, secs. 1, et seq.

term 'motor carrier' shall be construed to include private carriers of property by motor vehicle in the administration of sections 204 (d) and (e), 205, 220, 221, 222 (a), (b), (d), (f), and (g), and 224 of this part."

Shortly after the passage of the Act, the Commission established qualifications and maximum hours for drivers of motor vehicles operated by common and contract carriers.[3] It left undecided the extent of its jurisdiction over other employees. Subsequently, and after the passage in 1938 of the Fair Labor Standards Act,[4] the Commission again instituted proceedings to determine the previously undetermined extent of its jurisdiction. It concluded that its power over employees was limited to the promotion of safe operation, in consequence of which it had jurisdiction to establish hours of work and qualifications of drivers, but of no other employees.[5]

Plaintiffs filed their petition June 9, 1939, asking the Commission to hear evidence and establish regulations as to all employees. The Commission declined to do so, adhered to its former ruling, and declared that any further consideration would be futile, since it had no power to do the things asked. This action was then begun against the United States and the Commission. The Administrator of the Wage and Hour Division was allowed to intervene.

Jurisdiction of the court is conceded. Sec. 205 (h) of the Motor Carrier Act; Int. Com. Com. v. Humboldt Steamship Co., 224 U. S. 474; Louisville Cement Co. v. Int. Com. Comm., 246 U. S. 638; Kansas City So. Ry. v. Int. Com. Comm., 252 U. S. 178.

At the hearing counsel stated that, if the Act be construed as plaintiffs insist, the Commission will have to prescribe qualifications and hours for stenographers, clerks, accountants, me-
62 chanics, solicitors, and other employees of whose duties and qualifications it has no special knowledge; in this function its determination would not be based upon considerations of transportation—on which it is held to be expert—but upon social and economic considerations, matters on which it is not qualified or equipped, and which would entail the performance of a duty wholly foreign to its normal activities. But even if this be granted, we think there is no doubt that Congress had the power to impose the challenged duty. And the answer to the query cannot be found in the fact of inconvenience to the Commission,[6] but must be first looked for in the language of the statute. If the words are clear, there is no room for construction.

[3] Ex Parte MC-2, 3 M. C. C. 665, 690, 6 M. C. C. 557, 11 M. C. C. 203.
[4] 52 Stat. 1060.
[5] Ex Parte MC-28, 13 M. C. C.——.
[6] U. S. ex rel. Kansas City Sou. R. Co. v. I. C. C., 252 U. S. 178.

"To search elsewhere for a meaning either beyond or short of that which they disclose is to invite the danger, in the one case, of converting what was meant to be open and precise, into a concealed trap for the unsuspecting, or, in the other, of relieving from the grasp of the statute some whom the Legislature definitely meant to include." Van Camp & Sons Co. v. American Can Co., 278 U. S. 245, 253.

This rule has been applied even where the literal meaning leads to a hard or unexpected result. Crooks v. Harrelson, 282 U. S. 55, 60; Armstrong Paint & Varnish Works v. Nu-Enamel Co., 305 U. S. 315, 333. Statutes have been annulled by construction only when the effect of giving the words their clear meaning would "offend the moral sense, involve injustice, oppression, or absurdity." U. S. v. Goldenberg, 168 U. S. 95, 103; Van Camp & Sons Co. v. American Can Co., 278 U. S. 245, 253–4.

Guided by this rule, we find that Congress in the first section of the Act declared the definite policy to regulate motor transportation (1) so as to foster sound economic conditions in the public interest; (2) to promote adequate, economical, and efficient service, and reasonable charges; (3) to prevent unjust discriminations, undue preferences or advantages; (4) to avoid destructive competition; (5) to coordinate transportation by motor carriers and other carriers; (6) to develop and preserve a highway transportation system adapted to the needs of commerce and the national defense. The stated objects demonstrate beyond question that Congress has preempted the entire field. To the achievement of the ends sought, Congress provided that it should be the duty of the Commission to regulate carriers by establishing reasonable requirements with respect to (a) service, (b) transportation of baggage and express; (c) uniform systems of accounts, records, and reports; (d) qualifications and maximum hours of service of employees; (e) safety of operation and equipment.

In (d) the word "employees" is inclusive. There is nothing in its use or in its relation to other words in the section which, considered in the ordinary sense, can be said to indicate only a particular class of employees. If Congress had intended to distinguish between those employees engaged in the actual operation of motor vehicles and those engaged in other work, it could have done so, as it did in a former statute,[7] by the addition of less than half a dozen words. Hence, to read that limitation into the section would be not only to disregard the letter of the law, but to find, without guide or compass in the Act, a legislative intent to that end. To the contrary, such guide as there is—

[7] In the Hours of Service Act, 34 Stat. 1415, 45 U. S. C. 61, Congress by definition limited the word "employees" to "persons actually engaged in or connected with the movement of any train."

outside the distinct and definite meaning of the words—supports the view that Congress used the language of the section advisedly, and meant precisely what it said. For the third paragraph of Sec. 204, which concerns *private* carriers, expressly limits the power of the Commission over qualifications and hours to those employees whose work relates to safety of operation. This distinction between the two classes of carriers is convincing of a definite purpose, and the reason for it is obvious: private carriers are defined to be persons who transport for themselves—in furtherance of a commercial enterprise—or as
63 bailees, their own or another's property in interstate commerce.[8] As to such carriers, Congress properly concluded that to bring all their employees under the Commission's jurisdiction—as well as those engaged in the manufacturing or commercial end of the business, and having in themselves no direct relation to motor transportation—would create an anomalous situation, as it would.

Unless what has been said is incorrect, nothing remains except to ascertain whether, in giving effect to the words of the statute, we create a situation so "glaringly absurd" as to impel the conclusion Congress could not have intended such a result. With due deference to the dilemma of the Commission, we are unable to say that this is true. At the time of the passage of the statute, the Fair Labor Standards Act had not been passed or even considered by Congress, but there was in effect a law known as the "National Industrial Recovery Act,"[9] under which codes were established to regulate the hours of service of all classes of employees of motor carriers. The Motor Carrier Act expressly provided that it should supersede the provisions of the former codes.[10] There were also in effect in a majority of the states some sort of legislation covering, with diversity of detail and lack of uniformity, hours of service of employees, including drivers of motor vehicles. It is not unreasonable, in these circumstances, to assume that Congress, aware of the problem as it applied to interstate commerce and the advisability of uniformity, chose to place upon the Commission the details of its solution. Certainly, aside from the consumption of the Commission's time, there is nothing glaringly absurd in this, nor reason to suppose a better agency could be found for the purpose. The Commission's fear that it may be called upon to establish qualifications for executive

[8] Sec. 203 (a) (17). The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle," who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

[9] 48 Stat. 195, 15 U. S. C. A. 701, et seq., 4 F. C. A. Tit. 15, secs. 701, et seq.

[10] Sec. 204 (b), 49 U. S. C. A. 304 (b), 10A F. C. A., Tit. 49, Sec. 304 (b).

officials, solicitors, and lawyers, is overstrained. None of these classes is within the category of "employees" as that word is used in public service or labor legislation. The hearings before the committees of Congress developed that the percentage cost of labor was equal to nearly half the total gross revenue of motor carriers, and the special attention of Congress was directed by representatives of the unions to the labor aspect as applied to the problems of uniformity and stabilization, because of widely diversified business organization, absence of labor organization in some regions; and the claimed unreasonable practices of many operators.

And it is easy to see that stabilization of labor conditions as applied to this industry is an important, and indeed a necessary, part of the establishment of rates and general business regulation, matters as to which the Commission admittedly is expert, and these objectives appear as part and parcel of the purposes of the legislation. In this aspect, it is reasonable to conclude that Congress had them in mind when later, upon the passage of the Fair Labor Standards Act, it provided specifically that Sec. 7 thereof [11]—which establishes maximum hours of service—should not apply "with respect to (1) any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935, or (2) any employee of an employer subject to the provisions of Part I of the Interstate Commerce Act." The necessity of separate provisions for the exemption of employees of the two classes of carriers is manifest. There are no private carriers by rail subject to the Commission's jurisdiction. Congress, therefore, used inclusive language as to the employees of railroads. There are, however, many private motor carriers who are subject to a limited regulation by the Commission, and this is true for reasons which we have already explained. Their employees not subject to the jurisdiction of the Commission would, by the use of the language employed in the case of railroads, have been left outside of the provisions of the Fair Labor Standards Act. It was obviously the recognition of this fact alone that induced the use of different language in each instance.

64 In the view we take, the language of the disputed section is so plain as to permit only one interpretation, and we find nothing in the Act as a whole which can with any assurance be said to lead to a different result. The circumstances under which the section was placed in the bill may possibly have created a situation not contemplated by its sponsors, but to say

[11] 29 U. S. C. A. 207, 9 F. C. A., Tit. 29, Sec. 207.

that this is true would be pure speculation, in which we have no right to indulge, and upon which we can base no conclusion. We are, therefore, obliged to hold that the Commission was mistaken in limiting its powers to the drivers of trucks and buses.

A secondary question remains to be discussed. The intervener says that, if the statute be read literally, it is unconstitutional because it lacks the necessary legislative standard of qualifications or of service hours for application by the Commission. The rule announced in Panama Refining Co. v. Ryan, 293 U. S. 388, is cited to sustain this contention. But we think the standard established in the Act sufficient to escape the condemnation of the rule applied in that case. Even there the Supreme Court was careful to point out that legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution, the Court said, has never been regarded as denying to Congress the necessary resources of flexibility and practicality which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits.

Prior to the passage of the Motor Carrier Act, regulation of employees of motor carriers had been exhaustively dealt with under the N. I. R. A. codes, and there had been about two years of experience in operating under these codes. There were also the standards set up by the states, and there was the express provision in the statute that the Commission should, in setting up the new order, establish only reasonable requirements. The Commission itself found in this delegation a sufficient criterion to enable it to establish qualifications and hours of service for employees in the safety of operation. Why, then, are the standards inadequate when applied to the congressional mandate to secure safety of equipment, efficient service, reasonable rates, and economic soundness? In this respect, the Act is not different from that vesting powers in the Commission in relation to railroads, and the latter powers have invariably been sustained. Adequate legislative standards have been found in such general terms as "Public interest" and "reasonable rates," etc. In such cases the public need was a sufficient standard, and the detail involved required a flexibility inherent in administration by the Commission. Avent v. U. S., 266 U. S. 127; Intermountain Rate Cases, 234 U. S. 476; I. C. C. v. Goodrich T. Co., 224 U. S. 194; St. Louis, I. & S. Co. v. Taylor, 210 U. S. 281; New York Central Securities Corp. v. U. S., 287 U. S. 12. These cases have turned upon the right of Congress to delegate powers to the Commission to promote sound economic conditions, and efficient public service.

In the Motor Carrier Act Congress has extended the power to working hours. Unquestionably, a limit might have been set, as in the Fair Labor Standards Act. But it is clear that rigidity was not practical in motor carrier transportation, and this fact is recognized by the Commission in a report in one of the ex parte proceedings to which we have referred.

Congress, therefore, vested discretion to apply limits in the situations to be developed in hearings under Sec. 225 of the Act. We see no reason to doubt that reasonable requirements with respect to maximum hours of service is quite as definite as "reasonable rates." See Trustees of Saratoga Springs v. Saratoga Electric Light & Power Co., 191 N. Y. 123, 83 N. E. 693; Interstate Com. Commission v. Railway Co., 167 U. S. 479, 494. It is also apparent that Congress inteinded the Commission to avail of the experience and knowledge of other bureaus of the government, for authority to this end is provided in Sec. 225.[12]

65 This, as it seems to us, is just another instance where Congress has expressed a policy, prescribed a standard, and left to the Commission the duty of applying the policy and the standard to the facts of differing situations. Hampton & Co. v. United States, 276 U. S. 394.

We, therefore, think the Commission was in error in denying jurisdiction, and that an order should be made requiring it to consider plaintiffs' petition in accordance with the views expressed in this opinion.

(Signed) D. Lawrence Groner.
(Signed) Jennings Bailey.

December 4, 1939.

Dissenting opinion

Letts, J., dissenting: I concede that a literal construction of the statute leads to the result announced in the court's opinion, but I am not prepared to agree that Congress intended the result. The reason of the law should prevail over its letter. Sorrells v. United States, 287 U. S. 435.

The provisions of section 202 of the Motor Carrier Act evince the clear intent of Congress to limit the jurisdiction of the Commission to regulating the motor carrier industry as a part of the trans-

[12] The Commission is hereby authorized to investigate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers and private carriers of property by motor vehicle; and in such investigation the Commission shall avail itself of the assistance of all departments or bureaus of the Government and of any organization of motor carriers having special knowledge of any such matter.

portation system of the nation. The literal construction which the court has given the Act extends the regulation to factors which are not characteristic of transportation, or inherent in the industry. It would seem to enlarge the jurisdiction of the Commission and extend it beyond the Congressional grant of power. Section 202 (a) provides in part as follows:

"It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest."

Congress was confronted with a situation which demanded a practical solution. Casualties on the road had become countless. The legislative history seems to evidence a purpose to effect safety of operation. Congress was aware that many states had enacted statutes prescribing maximum hours of service for drivers of motor vehicles operated in intrastate commerce. Of the forty-three states in which such statutes are found none has dealt with maximum hours of other employees. In such state statutes there was a lack of uniformity which operated against the public interest. By the enactment of the Motor Carrier Act Congress sought to conform such regulations. By the enactment the lack of uniformity in the detail of such statutes was overcome so far as the regulations related to interstate commerce either directly or indirectly. It has often been said by the Supreme Court that uniformity of regulation is one of the purposes of the commerce clause of the Constitution. Noncompliance with a Federal law will not be excused because it is at variance with a state statute. Congress in the enactment of the Motor Carrier Act exercised its power to insure uniformity of regulation as against the influence of conflicting and discriminating state legislation in relation to interstate commerce.

The known and grave increase in casualties and the need of conformity of regulation required serious thought and prompt Congressional action. The remedy which Congress afforded had direct relation to the evils of which it was aware and which it sought to cure. I find nothing in the legislative history which indicates that Congress in its consideration of this act gave thought to sociological problems or economic considerations beyond those naturally incident to safety of operation in interstate com-
66 merce. The history of the legislation does not reveal any legislative concern about unemployment or other related social and economic problems which would have been of prime importance if Congress had undertaken to regulate all employees.

including those whose duties or service have no relation to safety of operation. The inclusive language here considered was not placed in the bill by the legislative committees. Nor was it considered by the committees or discussed by any witness at any hearing. It was placed in the bill by amendment offered on the floor of the Senate and accepted without debate. The amendment was not germane to the bill, and if given a literal interpretation produces an unexpected and unintended result. It would extend the jurisdiction of the Commission to social problems, which Congress had no thought of doing.

This view is not inconsistent with, but in recognition of the Commission's power to prescribe qualifications and hours of service for all such employees whose duties relate to safety of operation. It should not be said as a matter of law that such jurisdiction extends to such classes of employees whose service has no relation to safety of operation. What classes of employees are to be so regulated is a mixed question of law and fact which will be decided in proper cases after hearings are held to determine the facts.

I am of opinion that to give the Act the broad construction which a literal meaning requires leads to an unreasonable result which is inconsistent with the intent of Congress. I conclude that this case falls within the group of cases controlled by the rule announced in the case of Ozawa v. United States, 260 U. S. 178, as follows:

"It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail."

See also Sorrells v. United States, 287 U. S. 435. To hold otherwise requires that we find in the statute necessary standards to warrant the delegation of Congressional powers which a literal reading of the statute implies. I am unable to find standards in the language of the act which will protect it from assault on constitutional grounds. The absence of such standards negatives and rebuts the implication that Congress intended to extend the jurisdiction of the Commission.

(Signed) F. DICKINSON LETTS.

67 In United States District Court

Order allowing appeal

Filed February 5, 1940

* * * * * *

In the above-entitled cause, United States of America, Interstate Commerce Commission, and Harold D. Jacobs, Successor of Elmer F. Andrews, Wage and Hour Division, Department of Labor, Intervenor, defendants, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final decree of this Court entered January 24, 1940, and having also made and filed an assignment of errors and a statement of jurisdiction and having in all respects conformed to the statutes and rules of court in such case made and provided, it is

Ordered and decreed that the appeal be, and the same is hereby, allowed as prayed for.

JENNINGS BAILEY,
United States District Judge.

Dated February 5th, 1940.

68 In United States District Court

Motion for stay pending appeal

Filed February 5, 1940

* * * * * *

Come now the United States and Interstate Commerce Commission, defendants in the above-entitled cause, and show:

(1) That pursuant to its decision and opinion (one judge dissenting) handed down December 4, 1939, this Court, on January 24th, 1940, made and entered its final order and decree in the above-styled case, wherein the defendant Interstate Commerce Commission was ordered and required to take jurisdiction of a certain complaint and application filed with it by the plaintiffs herein.

(2) That compliance with said order would probably require the Commission to hold a long hearing, with many witnesses and the expenditure of much time and effort by the diverse parties who are interested in the matters involved in said proceeding before the Commission.

69 (3) That the defendants desire to take an appeal to the Supreme Court of the United States from said order and decree, and have presented their prayer for appeal, assignment of errors, and other papers required by law in connection with such appeal.

(4) That in the event this Court's decree should ultimately be reversed by the Supreme Court, the time and effort expended by the Commission, and by the parties participating in the proceedings before the Commission, would be wasted.

(5) That the rights and interests of the plaintiffs would not be prejudiced by postponing action by the Commission in said proceeding before it until the Supreme Court has heard and decided said appeal.

Wherefore, these defendants pray that the operation of this Court's order and decree, in so far as it requires the Commission to proceed with the hearing in said proceeding before it, be stayed and postponed until final disposition of the case in the Supreme Court.

FRANK COLEMAN,
Special Assistant to the Attorney-General,
Attorney for defendant,
United States of America.
NELSON THOMAS,
Attorney for defendant,
Interstate Commerce Commission.

70 In United States District Court

Order of stay pending appeal

Filed February 5, 1940

* * * * *

In the above-entitled cause, the defendants, United States and Interstate Commerce Commission, having filed their motion for stay of the operation of the final decree herein, in so far as it requires action by the Commission in the proceeding before it, pending the determination by the Supreme Court of the appeal herein, and the said motion having been duly considered by the Court, it is

Ordered that the operation of this Court's order herein, entered January 24, 1940, in so far as it requires the Commission to hold a hearing in the proceeding referred to in said order, be,

and it is hereby, stayed and postponed until after final disposition of this case in the Supreme Court.

D. LAWRENCE GRONER,
C. J., U. S. C. A.,
United States Circuit Judge.
JENNINGS BAILEY,
United States District Judge.

Dated February 5th, 1940.

71 [Citation in usual form, showing service on Albert F. Beasley, filed Feb. 5, 1940, omitted in printing.]

74 In United States District Court

Praecipe for transcript of record

Filed February 5, 1940

* * * * *

To the CLERK:

You will please prepare a transcript of the record in the above-entitled use to be transmitted to the Supreme Court of the United States pursuant to the appeal to said Court heretofore filed and allowed, and incorporate in said transcript the following:

1. Bill of complaint and Exhibits A, B, and C thereto.
2. Answer of United States.
3. Answer of Interstate Commerce Commission.
4. Plaintiffs' motion for judgment.
5. Motion for leave to intervene of Elmer F. Andrews, Administrator.
6. Order allowing intervention of Elmer F. Andrews, Administrator.
7. Answer of Elmer F. Andrews, Administrator, intervenor.
8. Designation of Court.
9. Final decree.
10. Order allowing substitution of Harold D. Jacobs, Administrator.
11. Petition for appeal and assignment of errors.

75 12. Statement of jurisdiction of Supreme Court.

13. Order allowing appeal.
14. Motion for stay.
15. Order allowing stay.
16. Citation on appeal, and acknowledgment thereof.
17. Notice of appeal, attaching copies of the petition for appeal, order allowing appeal, assignment of errors and statement as to jurisdiction, and acknowledgment of service thereof.

18. Praecipe for transcript of record and acknowledgment thereof.

19. Clerk's certificate dated February 8, 1940.

THURMAN ARNOLD,
Assistant Attorney General,
DAVID A. PINE,
United States Attorney,
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General,
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney,
For the Interstate Commerce Commission.
GEORGE A. MCNULTY,
General Counsel,
Wage & Hour Division, Department of Labor,
For Harold D. Jacobs, successor in office
to Elmer F. Andrews, Administrator.

Service of the foregoing praecipe for transcript of record and the receipt of a copy thereof are hereby acknowledged this 5th day of February 1940. No additional portions of the record are desired to be incorporated into the transcript.

ALBERT F. BEASLEY,
Counsel for Plaintiffs.

76 [Clerk's certificate to foregoing transcript omitted in printing.]

77 In Supreme Court of the United States

Statement of points to be relied upon and designation of the record to be printed

Filed February 10, 1940

Come now the appellants and say that they will rely upon the points made in their assignment of errors in brief and oral argument before this Court on their appeal in the above entitled cause.

Appellants further state that the entire record in this cause as filed in this Court is necessary, and should be printed to enable the Court to consider the points set forth above.

February 9, 1940.

FRANCIS BIDDLE,
Solicitor General.
THURMAN ARNOLD,
Assistant Attorney General.
DAVID A. PINE,
United States Attorney.
ELMER B. COLLINS,
FRANK COLEMAN,
Special Assistants to the Attorney General.
For the United States of America.
DANIEL W. KNOWLTON,
Chief Counsel,
NELSON THOMAS,
Attorney.
For the Interstate Commerce Commission.
d GEORGE A. McNULTY,
General Counsel,
Wage & Hour Division, Department of Labor.
For Harold D. Jacobs, successor of
Elmer F. Andrews, Administrator.

Service of a copy of this Statement of Points and Designation of the Record to be printed is acknowledged this 5th day of February 1940.

ALBERT F. BEASLEY,
Counsel for Appellees.

e [File endorsement omitted.]

f [Endorsement on cover:] File No. 44120. District of Columbia, D. C. U. S. Term No. 713. The United States of America, Interstate Commerce Commission, et al., Appellants vs. The American Trucking Associations, Inc., et al. Filed February 9, 1940. Term No. 713 O. T. 1939.

U. S. GOVERNMENT PRINTING OFFICE 1940